

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

YADKIN RIVERKEEPER, INC., AND  
WATERKEEPER ALLIANCE, INC.,  
Plaintiffs  
v.  
DUKE ENERGY CAROLINAS, LLC,  
Defendant.

# EXHIBIT 5

## TO

# COMPLAINT

## **AFFIDAVIT OF DONNA LISENBY**

Donna Lisenby, being first duly sworn, deposes and says:

1. My name is Donna Marie Lisenby. I have personal knowledge of the matters stated herein. I am 48 years old and suffer from no legal incapacity. I submit this affidavit to establish the standing and organizational interest of Waterkeeper Alliance, Inc. in this action.
2. I live at 154 Silverstone Farms Road in Vilas, North Carolina. I have lived at that address for approximately two years.
3. I have been a Riverkeeper for 15 years. I worked as the Catawba Riverkeeper in Charlotte, NC from January 1, 1998 until April 2008. I presently work as the Upper Watauga Riverkeeper in Boone, North Carolina, and have served in that capacity since June 2008. Both the Catawba Riverkeeper and Upper Watauga Riverkeeper programs have always been and are currently members of Waterkeeper Alliance.
4. I was elected by more than 150 Waterkeeper organizations from the United States and other countries to serve on the Waterkeeper Alliance Board of Directors for six years. As a board member, I was responsible for determining the mission of the organization, selecting the chief executive, and licensing member programs.
5. Waterkeeper Alliance advocates for swimmable, fishable, and drinkable waterways worldwide. Waterkeeper Alliance has more member Waterkeeper organizations in North Carolina than in any other state except California. Waterkeeper Alliance has nine licensed member Waterkeeper organizations with jurisdictions in North Carolina. Each of these organizations regularly advocates for the protection of the water resources in their respective jurisdictions. The Waterkeeper organization jurisdictions in North Carolina include the Cape

Fear, Neuse, New, Pamlico-Tar, Haw, Yadkin, Catawba, French Broad, and Watauga Rivers.

All of the Riverkeepers for these waterways are members of Waterkeeper Alliance.

6. From April 1, 2012 until the present I have also worked for Waterkeeper Alliance to coordinate its coal campaign. My job duties include a requirement to oversee development and execution of Waterkeeper Alliance's domestic and international coal work, which is a component of Waterkeeper Alliance's Clean and Safe Energy Campaign.

7. For the last decade or more, in my capacity as a Waterkeeper, I have documented and worked to remediate many water pollution events, including spills of sewage, oil, diesel fuel, coal ash, coal-tar asphalt sealant, and other chemicals into waters of the state and the United States.

8. In the course of my job duties as a Waterkeeper and a coal campaign consultant for Waterkeeper Alliance, I have tested water, fish, sediment, soil, and/or drinking water for contamination from coal ash ponds in North Carolina. I have witnessed groundwater seeps situated below coal ash pond dams leaking contaminated water into surface water in North Carolina.

9. As part of my work with Waterkeeper Alliance, I have reviewed and/or commented on numerous National Pollutant Discharge Elimination System (NPDES) permits in North Carolina. I have tested many discharges that are subject to a NPDES permit for compliance with permitted limits.

10. As part of our mission to protect North Carolina's waterways, Waterkeeper Alliance is dedicated to ensuring that the laws prohibiting coal ash pollution of groundwater and surface waters, and the laws requiring cleanup of such illegal pollution, are enforced to the greatest extent possible. Waterkeeper Alliance likewise works to ensure these laws are applied

consistently and vigorously at coal ash sites throughout the state. For example, Waterkeeper Alliance joined with other conservation groups to bring a declaratory judgment action before the North Carolina Environmental Management Commission to try to ensure North Carolina's groundwater regulations were being fully enforced statewide.

11. I do not believe NC DENR adequately represents the interests of Waterkeeper Alliance in this action. DENR says it is in the business of "customer service" to polluters like Duke. DENR has known about the coal ash pollution in North Carolina for years and has not taken action until conservation groups began giving notice of intent to sue Duke Energy under the Clean Water Act. DENR has already proposed a settlement with Duke that would require only further study of documented coal ash pollution, with no action to stop or clean it up. This approach is unacceptable and we have opposed it in our public comments. DENR's course of action does not represent Waterkeeper Alliance's interest in protecting North Carolina's waterways from coal ash pollution.

12. My statewide interest in coal ash pond across North Carolina began four years ago when I submitted a freedom of information act request to the Aquifer Protection Section of NC DENR and obtained ground water sampling results from 13 Duke and Progress Energy coal ash ponds. I reviewed the test results submitted by Duke and Progress Energy from the Allen, Asheville, Belews Creek, Buck, Cape Fear, Cliffside, Dan River, Lee, Marshall, Mayo, Riverbend, Sutton, and Weatherspoon coal ash ponds.

13. In October of 2009, I published a report that for the first time informed the public across the entire state of North Carolina of the following facts: "All coal ash ponds in NC that have been tested for groundwater contamination are leaking toxic heavy metals and other pollutants. Water sample results from ground water monitoring wells surrounding 13 coal ash

ponds operated by Progress and Duke Energy were analyzed. A total of 681 exceedences were found for arsenic, boron, cadmium, chloride, chromium, iron, lead, manganese, pH, sulfate and total dissolved solids. The level of exceedences ranged from 1.1 to 380 times higher than the NC ground water standard. NC coal ash ponds are toxic sources of dangerous pollutants that pose a danger to human and environmental health if the toxins spread to adjacent surface waters and drinking water wells. Additional testing is needed to determine whether the contaminants leaking from coal ash basins have spread to public water sources.”

14. In February of 2010, I wrote the North Carolina section of a national report on coal ash with Jeff Stant of the Environmental Integrity Project and others, entitled “No Damage Control: Mounting Damages from Coal Ash Waste Sites.” The report found: “Coal-fired power plants generate nearly 140 million tons of fly ash, scrubber sludge, and other combustion wastes every year. At 15 of the 31 sites, contamination has already migrated off the power plant property (off-site) at levels that exceed drinking water or surface water quality standards. The remaining 16 show evidence of severe on-site pollution . . . . These wastes contain some of the earth’s most deadly pollutants, including arsenic, cadmium, lead, selenium, and other toxic metals that can cause cancer and neurological harm in humans and poison fish.”

15. In September of 2010, I co-wrote a compilation report with Dan Conrad of the North Carolina Conservation Network that for the first time provided a comprehensive description of how coal ash contamination and the lack of state or federal regulations was impacting the state of North Carolina. The report found that “it is evident that [coal ash] poses a significant threat to North Carolina citizen’s public health and the environment.” It disclosed information about the number and location of high hazard coal ash pond dams across the state, noting that North Carolina had more high hazard coal ash dams than any other state in the United

States. It also provided information about 75 coal ash landfills located in 21 counties in North Carolina.

16. Based on scientific studies by the U.S. Geological Survey and my professional experience monitoring river and stream levels for more than a decade, I know that groundwater can supply an average of approximately 52 percent of the base flow in a stream in the southeastern United States. As water levels rise and fall due to climatic conditions and soil characteristics, groundwater can provide anywhere from 14 to 90 percent of the base flow of a river in the eastern United States. During drought conditions I have observed streams in North Carolina whose only flow was from groundwater and waste water discharges.

17. I am deeply concerned that NC DENR's failure to control groundwater pollution from coal ash ponds at coal fired power plants in North Carolina will continue polluting the waterways that I use and enjoy with high levels of arsenic, cadmium, lead, chromium, manganese, selenium, and other pollutants.

18. Beginning when I was two years old, my mother, father, aunts, uncles, and cousins taught me to swim, boat, and fish in waterways in South Carolina, where I grew up, and in New York State, where at least four generations of my mother's family has spent time at our summer home on Lake Champlain. I cannot remember any year of my life that did not include swimming, boating, and/or fishing with my friends or family members on a waterway somewhere on the east coast of the United States. In particular, I regularly use and enjoy waterways in North Carolina, including the Watauga, Cape Fear, and French Broad Rivers. For example, every Fourth of July week, the Carolina Canoe Club hosts a 10 day camp out and paddling trip called the "Week of Rivers." My sister Julie and I regularly attend this event and over the course of the years, we have paddled the Tuckaseegee, Nantahala, Pigeon, Chattooga,

and French Broad rivers many times. At least once a quarter I meet with other North Carolina Riverkeepers in various locations across the state. During these meetings we paddle, swim, fish, and/or hike along North Carolina rivers including the Catawba, Pamlico, Haw, and Neuse.

19. Based on my direct, firsthand knowledge of the pollutants found in coal ash, and the fact that ground water provides much of the base flow in North Carolina rivers, I do not believe it is safe for my health to swim or eat the fish I catch with my family and friends downstream or adjacent to coal fired power plant coal ash ponds. I will not allow my grandchildren to swim in water below a coal fired power plant discharge.

20. As a woman of childbearing age, and based on my knowledge of the amounts of heavy metals in water, sediment, and fish tissue near coal ash ponds in North Carolina, I feel it is necessary to limit my use and enjoyment of rivers, lakes, and streams that contain coal ash discharges and/or groundwater in order to protect my own health and the potential health of my unborn children.

21. I would like to continue our family fishing tradition of swimming, boating, and catching fish with my grandchildren, and would do so in the future if we could eat the fish safely, without risk of brain damage, cognitive impairment, or other health hazards caused by the heavy metals commonly associated with leaking coal ash ponds.

State of North Carolina  
County of Orange

I swear/affirm that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on 11/5, 2013.

Donna Lisenby  
Donna Lisenby

Subscribed and sworn to before me, a notary public, this the 5th day of Nov., 2013.

Lou Ann Phelps  
Notary Public  
Lou Ann Phelps, Notary Public

My commission expires: October 25, 2016

